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IN THE

Supreme Court of the United States

October Term, 1969

No. 386

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE 94, AFL-CIO; and AUTOMOTIVE MARINE, PRODUCTION FINISHERS, EQUIPMENT, MAINTENANCE AND PUBLIC SERVICE PAINTERS LOCAL UNION 1798, BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, AFL-CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CADILLAC,

Intervenors.

PETITION FOR WRIT OF CERTIORARI.

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Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

THOMAS CADILLAC, INC., and LOU EHLERS CADILLAC,

Intervenors.

PETITION FOR WRIT OF CERTIORARI.

Petitioner, International Association of Machinists District Lodge 94, AFL-CIO, hereinafter called "Machinists" and Automotive Marine, Production Finishers, Equipment, Maintenance and Public Service Painters Local Union 1798, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, hereinafter called "Painters" pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered into the above entitled case on May 2, 1969. Such

judgment affirmed an Order of the National Labor Relations Board which, overruling that of the Trial Examiner, concluded that Respondents by refusing to recognize Petitioner Machinists and Painters with respect to terms and conditions of employment of the employees formerly on the payroll of General Motors Corporation, or with respect to employees hired by Respondent after purchasing the separate dealer franchises, did not violate Section 8(a)(5) of the Act. Consequently, the Board ordered the complaint dismissed in its entirety.

Opinion Below.

The Opinion of the Court of the Appeals below is not yet reported and is attached hereto as Appendix "A." The Decision and Order of the National Labor Relations Board is reported at 170 NLRB No. 92 and is attached hereto as Appendix "B." The intermediate report and recommended Order of the Trial Examiner is attached hereto as Appendix "C." The printed transcript in the Court below is referred to herein as "JA."

Jurisdiction.

The Judgment of the Court of Appeals was entered on or about May 2, 1969.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented.

Whether Section 8(a)(5) imposes the duty upon the purchaser of a business to negotiate with the certified bargaining agent as to the retention of all or some of the seller's employees on the payroll?

Statute Involved.

The relevant provisions of the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 21 U.S.C. 151 *et seq.*), are Sec. 8(a)(5) and 9(a), as follows:

Sec. 7: "Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

Sec. 8(a)(5): It shall be an unfair labor pracitce for an imployer . . . to refuse to bargain collectively with the representatives of his employer, subject to the provisions of section 9(a).

Sec. 9(a): Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . ."

Statement.

A. The Board's Findings of Facts:

General Motor's operated a Cadillac motor cars sales and service business in Los Angeles from 1946 to May 28, 1965. Its locations were at 5151 Wilshire Boulevard, herein called "Wilshire" and additionally, since January 1954, a location at Seventh and Bixel herein called "Bixel" [JA Vol. I, p. 13].